

REPORT OF THE COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS

Voting Members

Ron Menor, Chair; Carol Fukunaga, Vice-Chair,
Ikaika Anderson, Stanley Chang, Breene Harimoto, Ann H. Kobayashi,
Joey Manahan, Ernest Y. Martin, Kymberly Marcos Pine

Committee Meeting Held
January 14, 2014

Honorable Ernest Y. Martin
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Executive Matters and Legal Affairs, which considered in executive session Resolution 14-14 entitled:

RESOLUTION TO REQUEST ADDITIONAL FUNDS AND INCREASE THE ATTORNEY FEE RATES FOR THE SERVICES OF KOBAYASHI, SUGITA & GODA, LLP, SPECIAL DEPUTY CORPORATION COUNSEL IN THE CIVIL ACTION ENTITLED U.S. COMPOSITE SOUTH PIPE, LLP V. FRANK COLUCCIO CONSTRUCTION COMPANY, ET AL.; CIVIL NO. CV-12-00538 JMS KSC AND TO REQUEST AN INCREASE IN ATTORNEY FEE RATES FOR THE SERVICES OF KOBAYASHI, SUGITA & GODA, LLP, SPECIAL DEPUTY CORPORATION COUNSEL, IN THE CIVIL ACTION ENTITLED FRANK COLUCCIO CONSTRUCTION COMPANY V. CITY AND COUNTY OF HONOLULU, CIVIL NO. 13-1-2259-08 KKS,

reports as follows.

The purpose of this Resolution is to: (1) Authorize an increase in the maximum amount of fees payable to the law firm of Kobayashi, Sugita & Goda, LLP to represent and defend the interests of the City in the civil action entitled U.S. Composite Pipe South, LLC v. Frank Coluccio Construction Company, et al., Civil No. CV-12-00538 JMS KSC ("Federal court case"); and (2) Increase the attorney fee rates for the services of Kobayashi, Sugita & Goda, LLP in the Federal court case and in the related State court

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

JAN 29 2014

COMMITTEE REPORT NO.

7

REPORT OF THE COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS

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Ron Menor, Chair; Carol Fukunaga, Vice-Chair,
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case entitled Frank Coluccio Construction Company v. City and County of Honolulu, Civil No. 13-1-2259-08 KKS ("State court case").

Your Committee, having been informed by the Department of Corporation Counsel of the facts of the Federal court case and the applicable law, finds that an increase in fees is justified. The additional amount authorized is \$200,000, which will bring the total maximum amount authorized and payable to the firm to \$270,000; provided that this total amount may be increased by the Council if it is satisfied with the justification for such increase.

Your Committee further finds that an increase in attorney fee rates for the services of Kobayashi, Sugita & Goda, LLP in both the Federal and State court cases referenced above are justified and authorizes the law firm to continue to represent the City at the hourly rate of \$295 per hour for senior partner Bert Kobayashi; \$265 per hour for partners; \$180 per hour for associate attorneys; and \$80 per hour for paralegals.

Your Committee on Executive Matters and Legal Affairs is in accord with the intent and purpose of Resolution 14-14 and recommends its adoption. (Ayes: Anderson, Fukunaga, Harimoto, Pine, Menor - 5; Noes: None; Excused: Chang, Kobayashi, Manahan, Martin - 4.)

Respectfully submitted,


Committee Chair

At the 1/29/14 Council meeting, the Resolution was amended and subsequently adopted in the form attached hereto as Resolution 14-14, FD1.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON JAN 29 2014

COMMITTEE REPORT NO. 7



RESOLUTION

TO REQUEST ADDITIONAL FUNDS AND INCREASE THE ATTORNEY FEE RATES FOR THE SERVICES OF KOBAYASHI, SUGITA & GODA, LLP, SPECIAL DEPUTY CORPORATION COUNSEL IN THE CIVIL ACTION ENTITLED U. S. COMPOSITE PIPE SOUTH, LLC v. FRANK COLUCCIO CONSTRUCTION COMPANY, ET AL.; CIVIL NO. CV-12-00538 JMS KSC AND TO REQUEST AN INCREASE IN ATTORNEY FEE RATES FOR THE SERVICES OF KOBAYASHI, SUGITA & GODA, LLP, SPECIAL DEPUTY CORPORATION COUNSEL, IN THE CIVIL ACTION ENTITLED FRANK COLUCCIO CONSTRUCTION COMPANY v. CITY AND COUNTY OF HONOLULU, CIVIL NO. 13-1-2259-08 KKS

WHEREAS, a lawsuit was filed by U.S. Composite Pipe South, LLC ("USCPS") in the United States District Court for the District of Hawaii, on October 3, 2012, against Frank Coluccio Construction Company ("Coluccio") and Safeco Insurance Company of America, as surety for Coluccio ("Safeco"), entitled U.S. Composite Pipe South, LLC v. Frank Coluccio Construction Company, et al., Civil No. CV-12-00538 JMS KSC ("lawsuit");

WHEREAS, said lawsuit involves the City's construction contract with Coluccio for the Beachwalk WWPS to Ala Moana Park Sewer: Phase I – Force Main System, Contract No. CT-DDC-0900444, and wherein USCPS, as the supplier of a certain sewer pipe, asserts claims for damages against Coluccio as the City's general contractor and against Safeco as Coluccio's surety; and

WHEREAS, Coluccio filed a First Amended Counterclaim on June 14, 2013 against USCPS and against Additional Counterclaim Defendants City and County of Honolulu and Westchester Fire Insurance Company as surety for USCPS; and

WHEREAS, Coluccio has asserted claims against the City for negligence and breach of contract and implied warranties for allegedly accepting and warranting the use of the pipe supplied by USCPS; and

WHEREAS, on August 7, 2013, the Honolulu City Council adopted Resolution 13-165 which approved the law firm Kobayashi, Sugita & Goda, LLP as a special deputy corporation counsel to represent the City and County of Honolulu in the lawsuit because of its specialized knowledge and expertise in construction litigation; and

WHEREAS, pursuant to Resolution 13-165, the Honolulu City Council authorized Kobayashi, Sugita & Goda, LLP to act as special deputy corporation counsel at its hourly rates of: \$295.00 for senior partner Bert T. Kobayashi; \$225.00 for partners; \$140.00 for associate attorneys; \$80.00 for paralegals; but limited the total attorney's fees and costs to \$70,000.00; and



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WHEREAS, the litigation in the lawsuit is on-going with trial scheduled for August 12, 2014 and mediation scheduled to begin January 30, 2014; and

WHEREAS, due to on-going discovery involving voluminous construction documents, additional funding in the amount of \$200,000.00 is requested to cover further discovery efforts, including depositions, in addition to preparation for and participation in mediation and trial, if necessary; and

WHEREAS, Kobayashi, Sugita & Goda, LLP has requested, and the Department of the Corporation Counsel recommends, that the Honolulu City Council authorize an increase to the hourly rates as follows: from \$225.00 to \$265.00 for partners and from \$140.00 to \$180.00 for associate attorneys in the lawsuit; and

WHEREAS, Kobayashi, Sugita & Goda, LLP also requests the same increase of the hourly rates for its legal services in the civil action entitled Frank Coluccio Construction Company v. City and County of Honolulu, Civil No. 13-1-2259-08 KKS in which Kobayashi, Sugita & Goda, LLP also acts as special deputy corporation counsel pursuant to the approval of Resolution 13-235 on October 9, 2013; and

WHEREAS, the current hourly rates for partners and associate attorneys have not changed since 2006 and the requested hourly rates are favorable within the legal community, and Kobayashi, Sugita & Goda, LLP has performed satisfactorily as special deputy corporation counsel; now therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

(1) Pursuant to RCH Section 5-204.1, the City Council authorizes the law firm of Kobayashi, Sugita & Goda, LLP to continue to act as special deputy corporation counsel representing the City in legal proceedings and any appellate proceedings arising out of the claims and lawsuit entitled U.S. Composite Pipe South, LLC v. Frank Coluccio Construction Company, et al., Civil No. CV-12-00538 JMS KSC, at the rate of \$295.00 per hour for senior partner Bert T. Kobayashi, \$265.00 per hour for partners, \$180.00 per hour for associate attorneys, and \$80.00 per hour for paralegals for preparation, research, and representation in legal proceedings, together with reasonable costs incurred in connection with the litigation and appellate proceedings, but not to exceed the total sum of Two Hundred Seventy Thousand Dollars and 00/100 (\$270,000.00), provided that this total amount may be increased by the Council if it is satisfied with the justification for such increase; and



RESOLUTION

(2) Pursuant to RCH Section 5-204.1, the City Council also authorizes the law firm of Kobayashi, Sugita & Goda, LLP to continue to act as special deputy corporation counsel representing the City in legal proceedings and any appellate proceedings arising out of the claims and lawsuit entitled Frank Coluccio Construction Company v. City and County of Honolulu, Civil No. 13-1-2259-08 KKS at the rate of \$295.00 per hour for senior partner Bert T. Kobayashi, \$265.00 per hour for partners, \$180.00 per hour for associate attorneys, and \$80.00 per hour for paralegals for preparation, research, and representation in legal proceedings, together with reasonable costs incurred in connection with the litigation and appellate proceedings; and

BE IT FINALLY RESOLVED by this Council that the Clerk be and is hereby directed to transmit copies of this resolution to the law offices of Kobayashi, Sugita & Goda, LLP, 999 Bishop Street, Suite 2600, Honolulu, Hawaii 96813 and to the Corporation Counsel.

INTRODUCED BY:

Ron Menor (br)

DATE OF INTRODUCTION:

January 15, 2014
Honolulu, Hawaii

Councilmembers